



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** April 12, 2013

**COUNCIL DISTRICT:** 6

**SUBJECT: PD12-049 & ABC12-015. A PLANNED DEVELOPMENT PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY, TO ALLOW OFF-SALE OF ALCOHOLIC BEVERAGES (WINE ONLY) IN ASSOCIATION WITH WINE PAIRING EVENTS IN AN EXISTING 1,484-SQUARE FOOT RESTAURANT (SAVORY KITCHEN) SITUATED WITHIN A MIXED RESIDENTIAL AND COMMERCIAL DEVELOPMENT (AVALON CAHILL) ON A 5.06 GROSS ACRE SITE (754 THE ALAMEDA).**

## **RECOMMENDATION**

The Planning Commission voted 6-0-1 (Commissioner Bit-Badal absent) to recommend that the City Council approve the Planned Development Permit and Determination of Public Convenience or Necessity to allow the proposed off-sale of alcohol in conjunction with wine pairing events in an existing eating establishment.

## **OUTCOME**

Should the City Council approve the subject Planned Development Permit and Determination of Public Convenience or Necessity, the existing restaurant, Savory Kitchen, within the Avalon Cahill mixed residential development, would be allowed off-sale of alcoholic beverages (wine only). Should the City Council deny the subject request, Savory Kitchen would not be able to sell alcoholic beverages for off-site consumption from this tenant location.

## **BACKGROUND**

On April 10, 2013, the Planning Commission held a public hearing to consider the Planned Development Permit and Determination of Public Convenience or Necessity (File No. PD12-049 & ABC12-015). As stated in the attached staff report, the Planning Commission could not make two of the required findings regarding the off-sale of alcoholic beverages due to the proximity to residential uses and existing off-sale establishments. Specifically, the subject site is located within

150 feet of the residential uses within the mixed use residential and commercial development. There are currently four existing off-sale establishments within a 1,000 foot radius of the tenant space. When the Planning Commission is unable to make all of the required findings, the Municipal Code requires that the Commission make a recommendation to the City Council, and the Council makes the final decision and may consider overriding benefit.

The Planning Commission made a motion to approve staff recommendation to recommend that the City Council approve the Planned Development Permit and grant the request for a Determination of Public Convenience or Necessity by a vote of 6-0-1 (Bit-Badal absent) with no discussion and no public testimony.

### **ANALYSIS**

The attached staff report provides a full analysis of this project with respect to the findings required to be made by the Planning Commission for a Determination of Public Convenience or Necessity (PCN). The City Council may make a Determination of Public Convenience or Necessity if it identifies and finds that a significant or overriding public benefit or benefits will be served by the proposed use.

In considering overriding public benefit, the proposed off-sale of alcoholic beverages (wine) is associated with and is incidental to an existing restaurant that offers cooking and wine-pairing events. No separate retail display for off-sale is proposed. In addition, a successful eating establishment will contribute to the economic vitality of the area.

### **EVALUATION AND FOLLOW-UP**

If the Permit is approved, the applicant would be able to proceed with offering off-sale of alcohol.

### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30; Public Outreach Policy. As discussed in the attached staff report, all public comments received to date on the proposal are supportive of the use and the off-sale of alcoholic beverages.

### **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

### **CEQA**

Final SEIR entitled, "Westpark Apartments," certified on February 10, 1999 (Resolution No. 68748).

/s/  
JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Salifu Yakubu, Division Manager, at 408-535-7911.

Attachment:  
Planning Commission Staff Report

**STAFF REPORT**  
**PLANNING COMMISSION**

**FILE NOS.:** PD12-049 & ABC12-015

**Submitted:** December 7, 2012

**PROJECT DESCRIPTION:**

A Planned Development Permit and Determination of Public Convenience or Necessity request to allow off-sale of alcoholic beverages (wine) in association with wine pairing events and classes in an existing 1,484 square foot restaurant (Savory Kitchen) situated within a mixed residential and commercial development (Avalon Cahill) on a 5.06 gross acre site.

|                   |                           |
|-------------------|---------------------------|
| Zoning            | A(PD) Planned Development |
| General Plan      | Transit Residential       |
| Council District  | 6                         |
| Annexation Date   | December 8, 1925          |
| Historic Resource | NA                        |
| Specific Plan     | Midtown Specific Plan     |

**LOCATION:**

South side of The Alameda between Wilson Avenue and Bush Street (754 THE ALAMEDA Suite 50)

**Aerial Map**

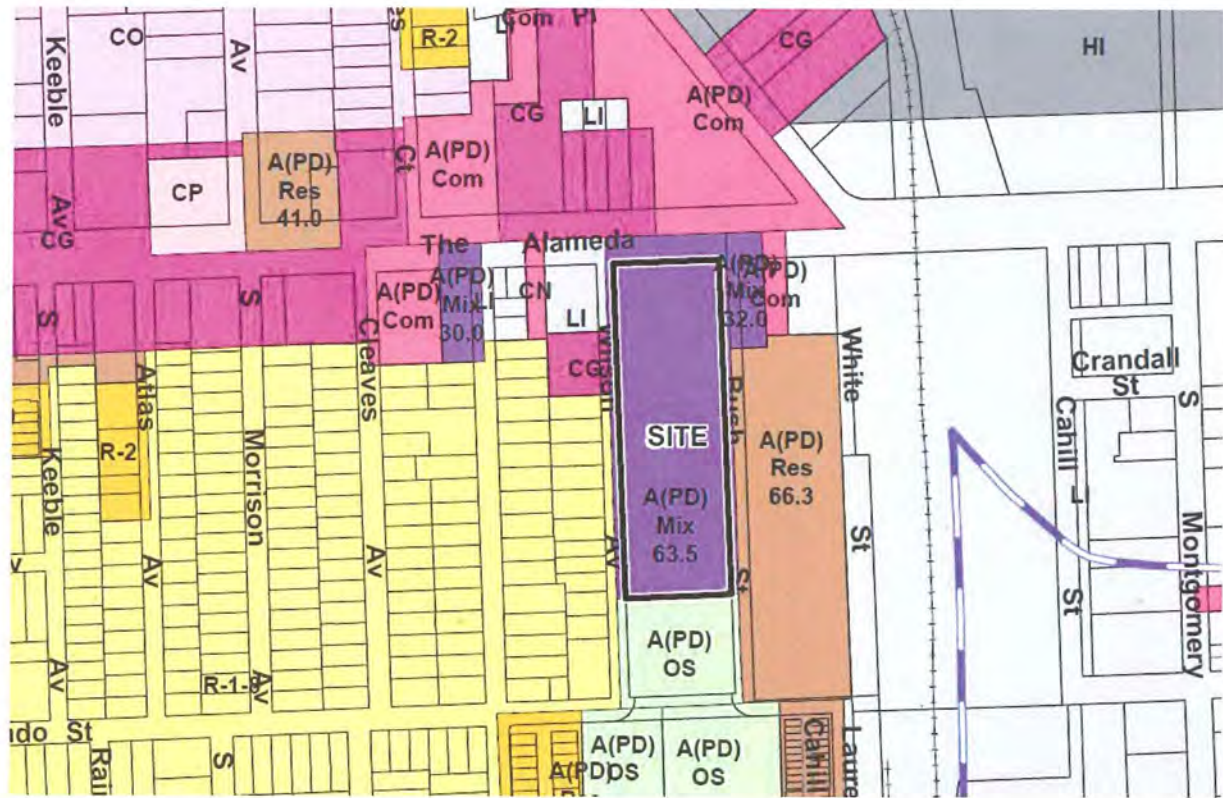




GENERAL PLAN



ZONING



## **RECOMMENDATION**

Planning staff recommends that the Planning Commission make a recommendation to the City Council to approve the proposed Planned Development Permit and Determination of Public Convenience or Necessity, for the off-sale of alcoholic beverages (wine) for an existing bonafide restaurant, for the following reasons:

1. The project conforms to the Envision San Jose 2040 General Plan Land Use/Transportation Diagram's designation of Transit Residential.
2. The proposed off-sale of alcohol is associated with and located within a bonafide restaurant.
3. The Police Department is neutral to the proposed off-sale of alcoholic beverages at the subject location.
4. The proposed project conforms to the requirements of CEQA.

## **BACKGROUND & DESCRIPTION**

On December 7, 2012, Colleen Janke of Savory Kitchen, applied for a Planned Development Permit and Determination of Public Convenience or Necessity (PCN) on the subject site to allow for the off-sale of alcoholic beverages (wine) for an existing bonafide restaurant (Savory Kitchen) that offers cooking and wine-pairing events in the form of custom classes, private parties and group classes. The proposed off-sale is limited only to specialty wine. The current hours of operation are between the hours of 10:00 a.m. until 9:00 p.m. Tuesday through Sunday. Wine sampling events are conducted on Monday from 7:00 p.m. to 9:00 p.m. The off-sale of specialty wine is provided as a convenience to customers in conjunction with the cooking classes and events. No interior or exterior alterations are proposed as a part of this Conditional Use Permit.

The subject site is located in the A (PD) Planned Development Zoning District. The Planned Development Zoning (File No. PDC98-012) was adopted by the City Council (Ordinance No. 25789) on March 2, 1999. A Planned Development Permit (File No. PD99-076) was issued on 25 April, 2000 for the development of 218 multi-family attached residential units and 8,888 square foot commercial retail use on an approximately 5.06 gross acre site.

A Planned Development Permit is required for a restaurant to include off-sale of alcoholic beverages. Typically, the initial decision making body for a Planned Development Permit is the Director of Planning. The State Department of Alcoholic Beverage Control (ABC) requires a Determination of Public Convenience or Necessity (PCN) for the off-sale of alcohol which, per the San Jose Municipal Code, is made by the Planning Commission. As a result, the Planned Development Permit and PCN are considered concurrently by the Planning Commission. As discussed in this report, not all of the required findings can be made by the Planning Commission for the off-sale of alcohol. Therefore, the Planning Commission is asked to make a recommendation to the City Council.



### **Site and Surrounding Uses**

The subject site is located on the south side of The Alameda and bounded by West San Fernando Street, Bush Street and Wilson Avenue. The subject tenant space fronts on The Alameda with residential uses above, and adjoining commercial retail spaces on both sides and across The Alameda.

### **ANALYSIS**

The key issues analyzed for the proposed off-sale of alcohol includes the project's conformance with the following: 1) the Envision San José 2040 General Plan; 2) the Zoning Ordinance; and 3) the California Environmental Quality Act (CEQA).

#### **Envision San Jose 2040 General Plan Conformance**

The subject site is designated Transit Residential on the Envision San José 2040 General Plan Land Use/Transportation Diagram. The project site is fully developed with commercial retail uses. The proposed use is consistent with the General Plan land use designation in that commercial uses including uses associated with a bonafide eating establishment will promote commercial activity within the City of San José and is compatible with the surrounding variety of residential uses.

In addition to its conformance with the General Plan's land use/transportation diagram, the proposed project is also consistent with the following General Plan Goals and Policies:

- **Goal LU-5 – Neighborhood Serving Commercial** Locate viable neighborhood-serving commercial uses throughout the City in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles traveled.
- **LU-5.7** Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.
- **LU-9.2** Facilitate the development of complete neighborhoods by allowing appropriate commercial uses within or adjacent to residential and mixed-use neighborhoods.

#### **Conformance with the Zoning Ordinance**

##### **Determination of Public Convenience or Necessity for the Off-Sale of Alcohol**

As of January 1995, the State of California Legislature implemented AB2897 by amending the Business and Professions Code (Section 23958) to require the Department of Alcohol Beverage Control (ABC) to deny an application for a liquor license "if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses," unless the City makes a Determination of Public Convenience or Necessity.

Undue concentration is defined as follows:

1. The premises of the proposed license are located in an area that has 20% more reported crimes than the average number of reported crimes for the City as a whole, or

2. The premises of the proposed license are located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Per the attached Police Department memorandum dated February 14, 2013, the project site is not located within an area over the 20% crime index. The site is considered unduly concentrated with off-sale licenses because the proposed off-sale establishment is located in a census tract where the ratio of existing retail on-sale/retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. For ABC to be able to issue a license for the off-sale of alcohol in an unduly concentrated area, the City must grant a Determination of Public Convenience or Necessity.

Subject to the provisions of Chapter 6.84 of Title 6 of the Municipal Code, the Planning Commission may issue a determination of Public Convenience or Necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages only after making all of the following findings:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis of Required Finding:* The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area. In a memorandum dated February 14, 2013, the San Jose Police Department has stated that it is neutral to the issuance of a proposed Planned Development Permit to allow off-sale of alcohol at an existing restaurant on the subject site. This finding can be made.

2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and

*Analysis of Required Finding:* There are four other establishments, CVS Pharmacy, Hun I Nut International, Tri Ez Foods and Pavilion Market that provide off-sale of alcohol within a thousand foot radius from the project site. This finding cannot be made.

3. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

*Analysis of Required Finding:* The proposed use meets the separation requirements for all other uses noted except that it is within 150 feet of the Avalon Cahill Park residential and commercial mixed-use development. The apartments and townhomes are located directly above the subject tenant space. This required finding cannot be made by the Planning Commission, and therefore, the Commission should make a recommendation to the City Council regarding this application.



4. Alcoholic beverage sales would not represent a majority of the proposed use; and

*Analysis of Required Finding:* The proposed use is associated with a bonafide restaurant and off-sale (wine) is provided as a convenience to customers in conjunction with their food order. No separate retail display for off-sale is proposed. This finding can be made.

5. At least one of the following additional findings:

- a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or
- b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or
- c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or
- d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis of Required Finding:* The proposed use is associated with a bonafide restaurant and is incidental to that establishment, and would contribute to the economic vitality of the existing commercial uses. Finding 5.d. can be made.

As noted above, all required findings required for off-sale of alcohol (wine), as identified in Title 6 of the San Jose Municipal Code for Determination of Public Convenience or Necessity cannot be made and therefore, the Planning Commission is requested to make a recommendation to the City Council.

### **California Environmental Quality Act (CEQA)**

The Final Supplemental Environmental Impact Report (SEIR) for the Planned Development Zoning (PDC98-012) and Permit (PD99-076) entitled, "Westpark Apartments," was certified on February 10, 1999 (Planning Commission Resolution #68748). The proposed project is covered under this EIR.

### **CONCLUSION**

Based on the above analysis, staff recommends that since all the required findings for the determination of Public Convenience or Necessity for off-sale of alcohol cannot be made, the Planning Commission should make a recommendation to the City Council. The location of the proposed off-sale of alcohol is within a bonafide restaurant in an existing mixed residential and commercial development and is intended to provide for a more convenient service to its customers. There are four other existing licensed off-sale establishments within 1000 feet of the proposed use.

**PUBLIC OUTREACH/INTEREST**

The property owners and occupants within a 500-foot radius were sent public hearing notices for the Planning Commission hearing. This staff report has been posted on the City's web site. Signage has been posted at the site to inform the public about the proposal. Staff has received three comments from the neighborhood in favor of the proposal. One resident, representing the Shasta-Hanchett Neighborhood Association, attended the community meeting scheduled on March 7, 2013 and expressed support for the proposed project. Staff has been available to discuss the proposal with interested members of the public.

**Project Manager:** Aparna Ankola**Approved by:****Date:** 4/3/2013

|   |  |
|---|--|
| <b>Owner/Applicant:</b>   | <b>Attachments:</b>  |
| <b><u>Owner:</u></b><br>Avalon Bay Communities, Inc.<br>671 N. Glebe Road, Ste 800<br>Arlington VA 22203        | Draft Resolution<br>Police Department Memorandum<br>Plan Set |
| <b><u>Applicant:</u></b><br>Colleen M Janke<br>Savory Kitchen LLC<br>887 Georgetown Place<br>San Jose, CA 95126 |  |

## **RESOLUTION NO.**

A Resolution of the City Council of the City of San José approving a Planned Development Permit and granting a Determination of Public Convenience or Necessity request to allow off-sale of alcoholic beverages (wine) in association with wine pairing events and classes in an existing 1,484 square foot restaurant (Savory Kitchen) situated within a mixed residential and commercial development (Avalon Cahill) on a 5.06 gross acre site.

## **FILE NO. PD12-049 & ABC12-015**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 7, 2012 applications (File Nos. PD12-049 & ABC12-015) were filed for a Planned Development Permit and Determination of Public Convenience or Necessity to allow for the off-sale of alcoholic beverages (wine) from an existing 1,484 square foot restaurant situated within a mixed residential and commercial development (Avalon Bay Cahill) on a 5.06 gross acre site (hereinafter referred to as "subject property"), situated in the A(PD) Planned Development Zoning District (PDC98-012), located on the south side of the Alameda between Wilson Avenue and Bush Street (754 The Alameda Suite 50); and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on April 10, 2013, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and



WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Planning Commission and the Director of Planning, Building and Code Enforcement; and development plan for the subject property entitled, "Savory Kitchen, 754 The Alameda, San Jose, CA, 95126" dated September 7, 2011, and said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of the City Council;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The subject site is located at the south side of the Alameda between Wilson Avenue and Bush Street (754 The Alameda Suite 50).
2. The subject site has a designation of Transit Residential on the Envision San José 2040 General Plan Land Use/Transportation Diagram.
3. The subject site is located in the A(PD) Planned Development Zoning District (File Number PDC98-012) and adopted on March 2, 1999 with Ordinance Number 25789.
4. The subject tenant space is located within a mixed residential and commercial development (Avalon Cahill) previously approved on March 3, 2000 (File Number PD99-076).
5. The subject site fronts on the Alameda with adjoining commercial retail spaces on both sides and residential uses above.
6. The subject establishment proposes the off-sale of alcohol (wine) in association with scheduled wine pairing events, custom classes, private parties or group classes within an existing 1,484 square foot restaurant.
7. The subject establishment includes on-sale of alcoholic beverages (beer and wine).
8. The subject establishment has been in operation since January 2012.
9. The off-sale of alcohol (wine) is intended to provide a convenience to customers to recreate meals and wine pairing based on classes conducted at the subject establishment.
10. Alcohol sales would not have a display area and therefore would not represent a majority of the existing bonafide restaurant.
11. The current hours of operation are from 10:00 a.m. until 9:00 p.m., Tuesday through Sunday. Wine sampling events are conducted on Monday from 7:00 p.m. to 9:00 p.m.
12. No additional increase in parking demand results from the proposed project.
13. Under the provisions of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Final SEIR entitled, "Westpark Apartments," for the

project was certified on February 10, 1999 (Planning Commission Resolution #68748). The proposed project is covered under this EIR.

14. The project site is not located within an area of high crime.
15. The project site is located in a census tract in which the ratio of on-sale and off-sale retail licenses to population exceeds the ratio of on-sale and off-sale retail licenses to population in the county in which the subject site is located.
16. In a memorandum dated February 14, 2013, the Police Department has indicated that they are neutral to the issue of off-sale of alcohol for an existing restaurant at this location.
17. The proposed use would lead to the grouping of more than four off-sale uses within a one-thousand-foot radius from the proposed use per data from the State Department of Alcoholic Beverage Control. There are four other off-sale uses within that radius; CVS Pharmacy, Hun I Nut International, Tri Ez Foods and Pavilion Market.
18. The proposed use is not within a Strong Neighborhood Initiative area or other area designated by the city for targeted neighborhood enhancement services or programs.
19. The project site is not located within 500 feet of a school, day care center, social services agency, parks or residential care or service facility.
20. The project building is located adjacent to and within 150 feet of residentially zoned property. Apartment and town home uses are located directly above the tenant space.
21. Without the granting of a Determination of Public Convenience or Necessity, the requested Planned Development Permit cannot be approved.

The City Council concludes and finds, based on the analysis of the above facts in regards to the off-sale of alcohol, that:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.
2. The proposed use would lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and
3. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.
4. Alcoholic beverage sales would not represent a majority of the proposed use; and

5. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger restaurant use and provide for a more convenient customer experience.

Further, the City Council concludes and finds, based on the analysis of the above facts, that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare.
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area.
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - b. By other public or private service facilities as are required.

Further, the City Council concludes and finds, based on the analysis of the above facts in regards to the Planned Development Permit, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan;
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property;
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious;
4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
  - a. Under the provisions of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Director of Planning has determined pursuant to the provisions of CEQA as well as the provisions of Title 21 of the San José Municipal Code the Final EIR "Westpark Apartments", thereto adequately addresses the environmental effects of the proposed project.

Finally, in accordance with the findings set forth above, a Planned Development Permit and a Determination of Public Convenience and Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby



granted. This City Council expressly declares that it would not have granted this permit and determination except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

This Planned Development Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions and all of the requirements set forth in San José Municipal Code Section 20.100.290.D shall have been fully performed or caused to be fully performed.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the permittee; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four years from and after the date of adoption of the Resolution by the City Council, granting this Permit, if within such four-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of adoption is the date the Resolution granting this Planned Development Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San José Municipal Code.
3. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "Savory Kitchen, 754 The Alameda San Jose, CA, 95126" dated September 07, 2011 on file with the Department of Planning, Building and Code Enforcement.
4. **Use Authorization.** This Planned Development Permit authorizes the off-sale of alcoholic beverages (wine), to be implemented only in conjunction with a bonafide restaurant.
5. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.
6. **Fire Department Requirements.** The permittee shall meet all requirements of the Fire Department, including Fire alarm and Fire sprinkler systems, at the Building or Occupancy Permit stage as appropriate.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of the previously approved permits on the site.

9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
10. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
11. **Neighborhood Complaints.** Neighborhood complaints related to noise, litter, graffiti, and other disturbances should be relayed to the Code Enforcement Division at (408) 535-7770. The list of complaints on record is to be made available to the Planning Commission at any subsequent hearings.
12. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
13. **Permittee Responsibility.** The permittee shall ensure that the use authorized by this Permit is implemented in conformance with all of the provisions of this Permit.
14. **Restroom Facilities.** Restroom facilities shall remain open and available to patrons during business hours.
15. **Exterior Clean Up.** The applicant shall be responsible for removing any litter (which emanates from the subject use) at the subject site and on all adjacent properties within 200 feet of the subject property between 7:00 and 8:00 a.m. on a daily basis. Garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. No cleaning and maintenance for outdoor areas that utilizes mechanical blowers, vacuums, or other noise generating equipment is permitted between the hours of 10:00 p.m. and 7:00 a.m.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
19. **Lighting.** This permit allows no new exterior lighting.
20. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
21. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

**ADOPTED** and issued this **16<sup>th</sup> day of April 2013**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

CHUCK REED  
MAYOR

ATTEST:

---

TONI J. TABER, CMC  
ACTING CITY CLERK

#### **NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*



**LEGAL DESCRIPTION**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

All of Lots 9, 10, 11, 12, 13, 14, 15 and 16, as shown upon that certain Map entitled, "Barstow's Subdivision of the Wilson Tract", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 17, 1896 in Book I of Maps, at page 11, and a portion of Lots 16 and 17, as shown upon that certain Map entitled, "Map Showing the Subdivisions of the Rancho de los Coches", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on November 6, 1867 in Book "A" of Maps, at page 47, and being more particularly described as follows:

Beginning at the point of intersection of the Northerly line of San Fernando Street, (formerly North Street), and the Easterly line of Wilson Avenue, as said North Street and Wilson Avenue are shown on the Map of Barstow's Subdivision of the Wilson Tract above referred to; thence Northerly along the Easterly line of Wilson Avenue and its Northerly prolongation, 934.00 feet, more or less, to its intersection with the Southerly line of The Alameda; thence Easterly along said last named line, 240.00 feet, more or less, to its intersection with the Westerly line of Bush Street; thence Southerly along said last named line, 934.00 feet, more or less, to its intersection with the Northerly line of San Fernando Street; thence Westerly along said Northerly line of San Fernando Street, 240.00 feet, more or less, to the point of beginning.

Excepting and reserving therefrom, to Grantor, its successors and assigns forever, all minerals, oil, gas and other hydrocarbon substances below a depth of 500 feet of said real property, without the right of surface entry.

As reserved in the Deed recorded September 4, 1974 in Book B070, page 236, Official Records.

APN: 261-33-043

ARB: 261-33-041,042

\*\*\*\*



# Memorandum

**TO:** Aparna Ankola  
Planning Department

**FROM:** Ofc. Christine Zarate #3165  
San Jose Police Vice Unit

**SUBJECT:** PD12-049  
754 The Alameda

**DATE:** February 14, 2013

---

Approved

Date

---

I have received your request for input regarding Savory Kitchen at 754 The Alameda, San Jose, Ca. 95126. The Savory Kitchen is an existing restaurant with a Type 41, on-sale beer and wine ABC license. Savory Kitchen is seeking a Planned Development Amendment to allow off-sale of alcohol.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(3). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.

The Savory Kitchen is located in San Jose Police Beat F4. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

## Police Beat Crime Statistics

| Beat         | Index Crimes | Arrests | Total | 20% Above Average |
|--------------|--------------|---------|-------|-------------------|
| F4 (2011)    | 182          | 258     | 440   | No                |
| City Average | 172          | 311     | 483   |                   |

Department of Alcohol Beverage Control (ABC) records indicate The Savory Kitchen is in census tract 5003. Pursuant to B&P Section 23958.4 (a)(3), the ratio of off-sale and on-sale retail licenses to population in census tract 5003 **does** exceed the ratio of off-sale and on-sale retail licenses to population in the county in which the applicant premises are located.

**Authorized and Current ABC Licenses in Census Tract 5003**

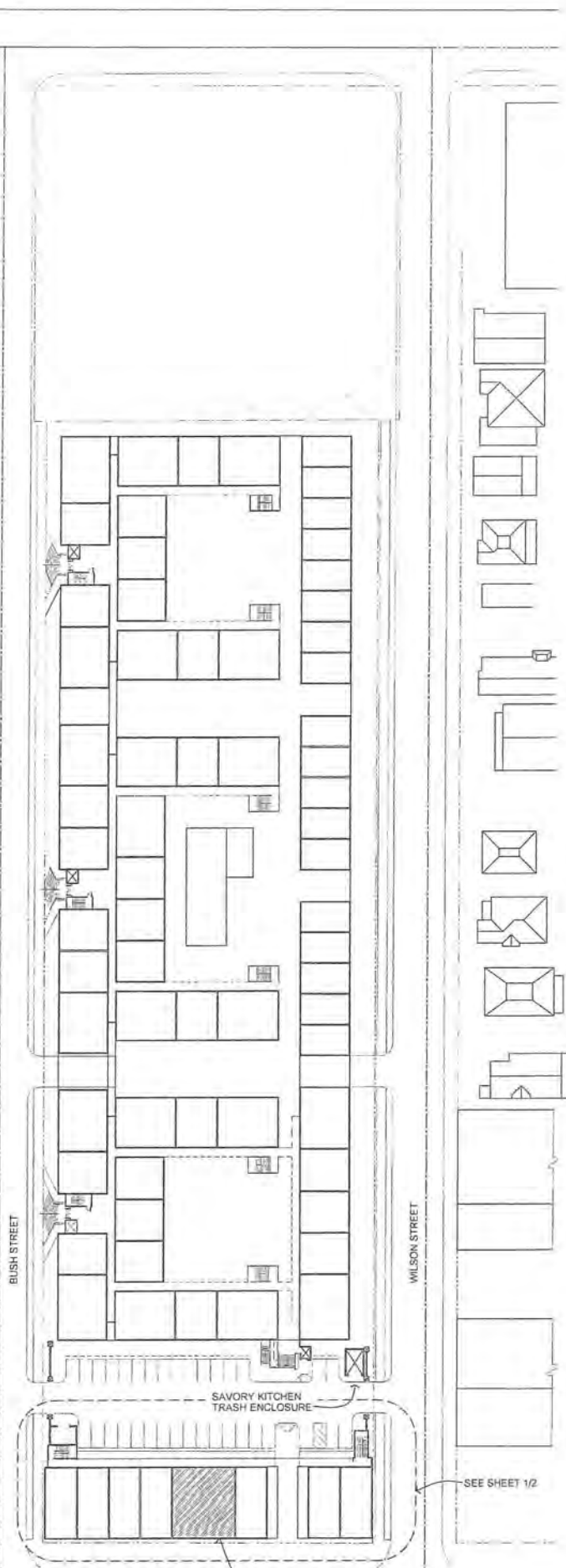
| Census Tract | Authorized ABC Licenses as of May 2012 |            | Current ABC Licenses as of February 2013 |            | Unduly Concentrated |            |
|--------------|--|------------|--|------------|---------------------|------------|
|              | On - Sale                              | Off - Sale | On - Sale                                | Off – Sale | On - Sale           | Off – Sale |
| 5003         | 4                                      | 1          | 14                                       | 8          | Yes                 | No         |

The San Jose Police Department is neutral to the Planned Development Permit Amendment to allow off-sale of alcohol at an existing restaurant. Please feel free to contact me at 277-4322 if you have any questions.

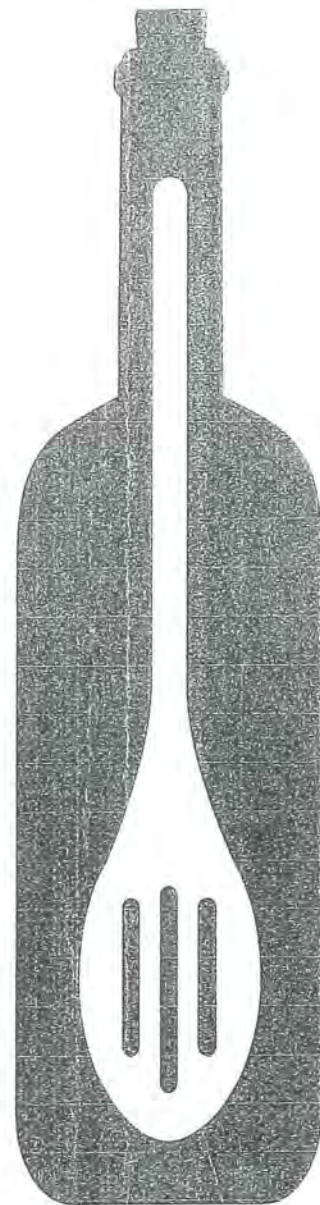
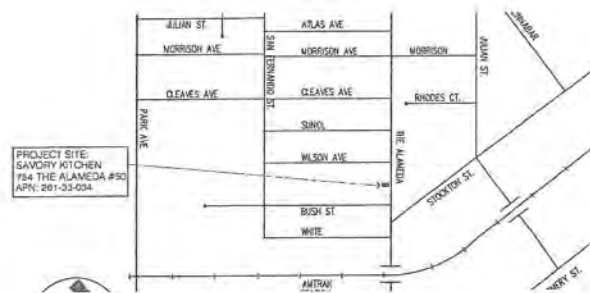
Ofc. Christine Zarate #3165  
Administrative Officer  
Special Investigations/Vice



PD12-049



SEE SHEET 1/2



savory kitchen

## PLANNING DATA

SAVORY KITCHEN  
754 THE ALAMEDA, SUITE 50  
APN #: 261-33-043  
USE: RESTAURANT  
TYPE OF CONSTRUCTION: V-1 HOUR  
FLOOR AREA: 1,484 SF  
OCCUPANCY GROUP: B  
SPRINKLERED BUILDING: YES  
NUMBER OF STORIES: 4 (FIRST LEVEL SHOWN; THREE ABOVE, NOT IN SCOPE)  
OCCUPANT LOAD: - SEE DRAWING 3  
SERVICE / BACK AREA (200 = 100) / 200 = SAY 1.5 2  
DINING AREA 472 / 30 = SAY 1.5 16  
UNOCC. AREA\* 476 / 0 / 0 = SAY 1.5 0  
EGRESS AREA (225 = 150) / 0 = SAY 1.5 0  
2 EXITS REQUIRED  
\* UNOCCUPIED AREA = COOLER, FREEZER, MOP SINK, TOILET ROOM, DISPLAY, ENTRY, CIRCULATION, MILLWORK AND WALLS  
SANITARY FACILITIES: 1 ADA RESTROOM (EXISTING)

## SCOPE OF WORK

THE SCOPE OF WORK INCLUDES THE INTERIOR TENANT IMPROVEMENT OF AN EXISTING 1,484 SQUARE FOOT SPACE WITHIN THE EXISTING AVALON AT CAHILL DEVELOPMENT TO SERVE AS A RESTAURANT

INTERIOR ROOMS ARE SEPARATED BY GYPSUM BOARD AND METAL STUD PARTITIONS; THE CEILING AND CEILING GRID, LIGHTS AND DIFFUSERS ARE EXISTING AND MODIFIED TO ACCOMMODATE THE PRESCHOOL LAYOUT.

## DRAWING INDEX

- VICINITY MAP, SITE PLAN, PLANNING DATA, SCOPE OF WORK, DRAWING INDEX GENERAL NOTES
- EXISTING/DEMOLITION PLAN, PROPOSED FLOOR PLAN, FLOOR PLAN-BUILDING ONE, SCHEDULES
- FLOOR PLAN - EQUIPMENT, OCCUPANT LOAD DIAGRAM, EQUIPMENT SCHEDULE
- REFLECTED CEILING PLAN, POWER PLAN, NOTES, LIGHT FIXTURE SCHEDULE
- PLUMBING PLAN, MECHANICAL PLAN, PLUMBING SYMBOLS
- INTERIOR ELEVATIONS, FINISH SCHEDULE
- EXHAUST HOOD: PLAN, SECTION, DETAILS

## GENERAL NOTES

- CODE REQUIREMENTS:  
BUILDING CODE: CALIFORNIA BUILDING CODE 2010, BASED ON 2010 INTERNATIONAL BUILDING CODE  
OCCUPANCY GROUP: E-1  
TYPE OF CONSTRUCTION: TYPE V-B  
OTHER CODES: 2010 CEC, 2010 CPC, 2010 CMC, AND 2010 CALIFORNIA ENERGY CODE
- DO NOT SCALE THESE DRAWINGS.  
WRITTEN DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE JOB SITE. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT PRIOR TO THE COMMENCEMENT OF ANY WORK.
- WHEREVER DIMENSIONS INDICATE OR DIMENSIONS TIE INTO EXISTING WORK, THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, CONDITIONS, ETC. AND SHALL REPORT ANY DISCREPANCY TO THE ARCHITECT BEFORE PROCEEDING WITH THE WORK.
- REGARDLESS OF DIMENSIONS SHOWN, ALL NEW WORK SHALL ALIGN EXACTLY WITH THE EXISTING WORK WITH RESPECT TO FLOOR ELEVATIONS, COLUMN CENTER LINES, WALL FACES, ETC.
- ALL MATERIALS ARE NEW UNLESS NOTED EXISTING.
- OFOI OWNER FURNISHED, OWNER INSTALLED  
OFCI OWNER FURNISHED, CONTRACTOR INSTALLED
- PARTITIONS  
METAL STUD AND GYPSUM WALL BOARD WALL  
NEW GYPSUM BOARD ON EXISTING STUDS  
REMOVE EXISTING CONSTRUCTION
- SYMBOLS:  
P- PARTITION TYPE - SEE DRAWING A4.1  
D- DOOR NUMBER - SEE SCHEDULE, DRAWING A2.1

Savory Kitchen

Colleen M. Janke  
754 The Alameda,  
Suite 50  
San Jose, CA 95126

Janke and Associates  
Architecture  
Planning  
Interior Design

Edward Janke, AIA  
Principal Architect  
Joan F. Moore, Assoc. AIA  
Senior Associate

856 Georgetown Place  
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08/22/11  
08/27/11

REVISIONS

GRAPHIC SCALE

IF THIS DRAWING IS NOT 24" x 36" IT  
HAS BEEN REDUCED.  
USE GRAPHIC SCALE

DESIGNED BY

J. MOORE

DRAWN BY

J. MOORE

CHECKED BY

J. MOORE

PROJECT NAME

Savory Kitchen 504

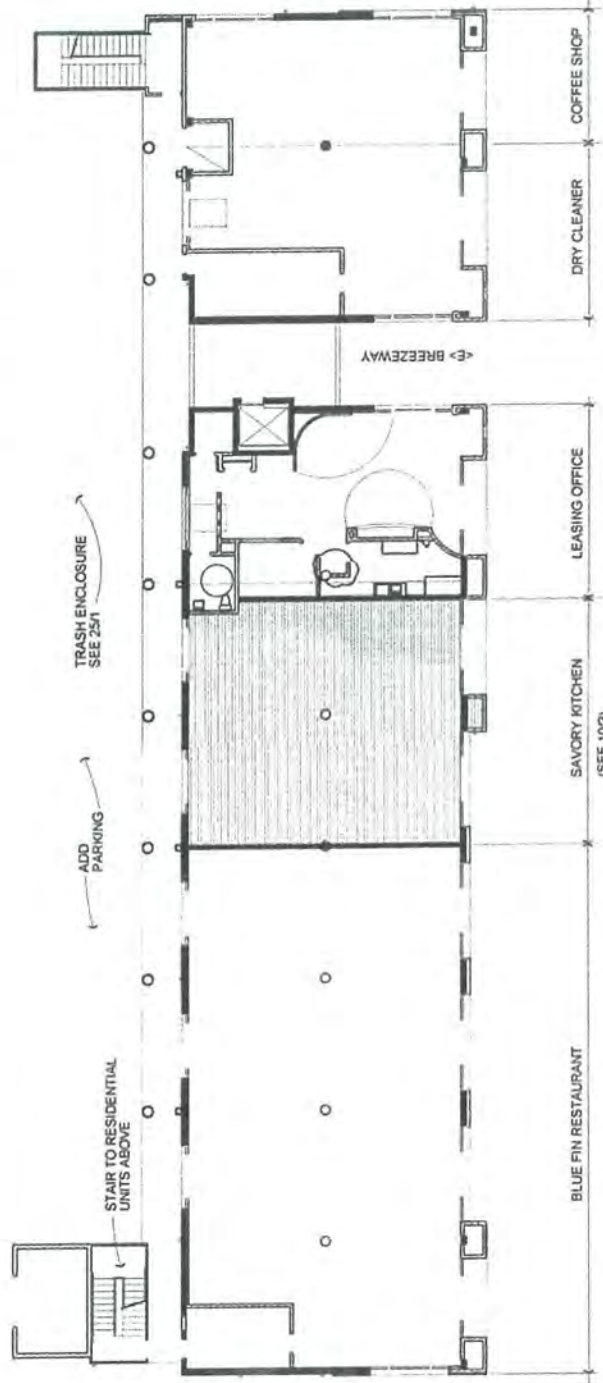
DRAWING NUMBER

1

OF

7 DRAWING  
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1 FLOOR PLAN - BUILDING ONE

